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SUBCHAPTER 9. OVERSIGHT COSTS

7:26C-9.1 Scope

(a) This subchapter provides:

1. The fixed cost schedule for Department review of a preliminary assessment report, site investigation report or biennial certification submitted by any person;
2. The fixed costs schedule for a person to obtain Department oversight of remediation of a discharge from an underground storage tank not regulated by N.J.A.C. 7:14B;
3. The oversight cost formula for Department oversight activities to be directly billed to the person conducting the remediation of a site not subject to the fixed costs set forth at N.J.A.C. 7:26C9.2; and
4. The procedures and criteria by which the recipient of a bill for Department oversight costs calculated pursuant to N.J.A.C. 7:26C-9.3(d) may contest those oversight costs.

7:26C-9.2 Fixed oversight costs

(a) The applicable fixed costs required by this section upon submittal to the Department of each request or submission are as follows:

1. Preliminary assessment report	\$250.00
2. Site investigation report	\$500.00
3. Remedial action report*	\$500.00
4. Biennial Certification	\$250.00

* This is limited to underground storage tanks not regulated by N.J.A.C. 7:14B.

(b) The fixed costs required by (a) above are nonrefundable, are not one time costs, and are required with each and every applicable submittal made to the Department.

(c) The Department shall not review a preliminary assessment report, site investigation report, biennial certification or remedial action report for remediation of a discharge from an underground storage tank unless and until the Department receives the appropriate fixed cost as listed in (a) above.

7:26C-9.3 Oversight cost formula

(a) Oversight costs are due to the Department, at the address provided at N.J.A.C. 7:26C-9.5, within 30 calendar days after receipt from the Department of a bill for the Department's oversight costs for the period being charged.

(b) The Department shall include the following information in the bill for the Department's oversight costs referenced in (a) above:

1. The site job number;
2. The name of each staff member performing work on the site; and

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3. The number of hours spent by each staff member working on the site; and

4. The dollar amount of the oversight costs calculated pursuant to (d) below.

(c) The Department shall send a bill based on the formula in (d) below to the person responsible for conducting the remediation at regular intervals throughout the duration of the remediation.

(d) The Department's oversight costs are based upon the following formulas:

Oversight Costs = direct program costs + indirect program costs + expenses; or
for persons signing the Developer's Certification found in Appendix D and for persons responsible for conducting the remediation of discharged substances at their primary residence,
Oversight Costs = direct program costs + expenses, where:

1. Direct program costs = (number of coded hours X hourly salary rate) X (1 + salary additive factor) X (1 + fringe benefit factor)

i. Number of coded hours represents the sum of hours each NJDEP employee has coded to the site specific job number. Actual hours for all NJDEP employees including without limitation case managers, geologists, technical coordinators, samplers, inspectors, supervisors, section chiefs, and bureau chiefs using the site-specific job number, will be included in the formula calculations;

ii. The hourly salary rate is each employee's annual salary divided by the number of working hours in a year;

iii. The salary additive rate represents the prorated percentage of charges attributable to NJDEP employees' reimbursable "down time." Reimbursable "down time" includes vacation time, administrative leave, compensatory time, sick leave, holiday time, emergency or early closing, jury duty, absent with pay, convention, injury in the line of duty (SLI), military allowance with pay, union negotiating sessions, lost time on first day of injury, counseling employee advisory service, union business activities, grievances/hearings/Department conferences, civil service examinations, absent with pay in lieu of working holiday, and workers' compensation/SLI. The calculation for the salary additive is the sum of the reimbursable "down time" divided by the net Department regular salary for given fiscal year. The net Department regular salary is calculated by subtracting from the Department regular salary employees' reimbursable and non-reimbursable "down time." Non-reimbursable "down time" includes absent without pay, fire called by State Fire Warden, conferences and seminars, voluntary furlough, family leave, and suspension without pay,

iv. The fringe benefit rate represents the Department's charges for the following benefits: pension, health benefits including prescription drug and dental care program, workers compensation temporary disability insurance, unused sick leave and FICA. The fringe benefit rate is developed by the Department of the Treasury's Office of Management and Budget (OMB). OMB negotiates the rate with the United States Department of Health

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and Human Services on an annual basis. The rate is used by all State agencies for estimating and computing actual charges for fringe benefit costs related to Federal, dedicated and non-state funded programs; and

2. Indirect program costs = (number of coded hours X hourly salary rate) X (1 + indirect program cost factor)

i. The indirect program cost rate represents the rate which has been developed for the recovery of indirect program costs in the Site Remediation Program. This indirect rate is developed by the Department on an annual basis in accordance with the New Jersey Department of Treasury OMB Circular Letter 86-17 and the Federal OMB Circular A-87, "Cost Principles for State and Local Governments";

ii. The components of the indirect program cost rate include the Department's operating and overhead expenses that cannot be coded as direct salary charges for a particular case, such as the salary and non-salary costs incurred by the Site Remediation Program. In addition, the indirect cost rate includes the Site Remediation Program's proportionate share of the costs associated with the Offices of the Commissioner, the Division of Financial Management and General Services, and the Division of Personnel;

iii. The total of these indirect costs is divided by the total costs of the Site Remediation Program to determine the indirect cost rate; and

3. Expenses represent any other site specific costs including, but not limited to, laboratory analysis or contractor expenses. These expenses shall be billed directly as a formula add on.

(e) Interest shall accrue on the unpaid balance of oversight costs, beginning at the end of the 30 calendar day period established at (a) above, at the rate established by Rule 4:42 of the current edition of the Rules Governing the Courts of the State of New Jersey.

(f) Failure to pay oversight costs may result in the Department:

1. Not issuing a no further action letter pursuant to N.J.A.C. 7:26C-2.6;
2. Ceasing all further oversight of the remediation; and
3. Taking enforcement action to compel compliance.

7:26C-9.4 Oversight cost review

(a) To contest an oversight cost calculated pursuant to N.J.A.C. 7:26C-9.3(d), any person shall, within 30 calendar days after the person's receipt of the bill for the oversight cost from the Department, submit a written request to the Department, at the address provided at (c) below, for an oversight cost review pursuant to (d) below.

(b) The Department shall deny accept an oversight cost review request if the request is based on the following:

1. An employee's hourly salary rate;

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2. The Department's salary additive rate or fringe benefit rate; or

3. Management decisions of the Department, including decisions regarding who to assign to case, how to oversee the case or how to allocate resources for case review.

(c) The objector shall submit an oversight cost review request to the Department at the following address:

Attention: Oversight Cost Review Request
New Jersey Department of Environmental Protection
Division of Remediation Support
Office of Fiscal Support Services
401 E. State Street
PO Box 413
Trenton, NJ 08625

(d) The following information shall be included in a request for an oversight cost review:

1. A copy of the bill;
2. Payment of all uncontested charges, if not previously paid;
3. A list of the specific oversight cost charges contested;
4. The factual questions at issue in each of the contested charges;
5. The name, mailing address and telephone number of the person making the request;
6. Information supporting the request or other written documents relied upon to support the request; and
7. A request for an informal meeting with Department representatives, if appropriate and desired.

(e) If any information or the payment required by (d) above is not included, the Department shall deny a request for an oversight cost review.

(f) Upon the Department's receipt of a request for an oversight cost review, the Department shall attempt to resolve any of the factual issues in dispute. If the Department determines that an oversight cost imposed was incorrect, the Department shall adjust the oversight cost and issue a new bill which shall be due and payable within 30 calendar days after receipt.

(g) The Department may, if it determines that the factual issues involving an oversight cost dispute cannot be resolved informally, determine the matter to be a contested case and transfer it to the Office of Administrative Law for an adjudicatory hearing. An adjudicatory hearing shall be conducted pursuant to the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq., and the Uniform Administrative Procedure Rules, N.J.A.C. 1:1.

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(h) If the Department does not determine the matter to be a contested case and, therefore, n subject to an adjudicatory hearing, the Department shall issue written notification for this determination. This determination shall be considered a final agency action.

(i) If the objector does not file a request for an oversight cost review within 30 calendar days after the objector's receipt of the bill for the oversight cost from the Department, the full amount of the oversight cost shall be due and owing. If the bill is not paid, the Department may take any action in accordance with N.J.A.C. 7:26C-9.3(g).

7:26C-9.5 Payment for oversight costs

All payments of oversight costs required by this subchapter shall be made by certified check, attorney check, money order, or by personal check. Checks and money orders shall be made payable to "Treasurer, State of New Jersey." Unless otherwise authorized by the Department, all payments of oversight costs shall be made to the address indicated on the invoice.